

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 990 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJ STATE ROAD TRANSPORT CORPN

Versus

PRAVINBHAI KALYANBHAI MISTRY

Appearance:

MR NV ANJARIA for appellant

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/09/98

ORAL JUDGMENT

#. By this Appeal, the Gujarat State Road Transport Corporation, Ahmedabad challenges the award of the Motor Accident Claims Tribunal, Valsad at Navsari, in MACP No.81 of 1983, decided on 14th October 1986.

#. The facts of the case in brief are that on 10.12.82, the applicant was a pillion rider on a motorbike which

was proceeding towards railway station of Valsad town on Sayaji road from east to west. Just ahead of the motorbike was S.T. bus which suddenly took a right turn near the traffic point called 'Fuvera'. As a result the motorbike dashed into a bus throwing off the applicant-respondent No.1. As a result of the accident, the respondent-claimant sustained serious injury on his right hip and his urethra was also affected. He sustained injuries on other parts of his body also. He was admitted in Civil Hospital, Navsari, where he was operated by civil surgeon Dr.Ninema. At the time of accident, the applicant-respondent No.1 was in the employment of chemical factory and his monthly salary was Rs.1,000/=. He made a total claim of Rs.50,000/=. Under the impugned award, the learned tribunal has awarded Rs.16,000/= as a compensation to the applicant-respondent. Hence this Appeal before this Court.

#. The learned counsel for the appellant contended that the tribunal has committed serious illegality in not proportionately holding the driver of the motorbike to be negligent to the extent of 50% in this case. It has next been contended that the amount of compensation awarded to the applicant-respondent No.1 is highly excessive.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the appellant.

#. The applicant-respondent has been examined in the claim application at ex.48. From the side of the appellant, the bus driver was examined at ex.32. In the deposition, the applicant-respondent No.1 no doubt has not described the accident graphically. The applicant has stated that the bus was started to take turn towards the left but then suddenly it took a right turn which was resulted in the accident with the motorbike. This motorbike was being driven by one Narendrasinh, who on seeing the sudden turning of the bus, had applied brakes of the motorbike with great force and as a result of the same, the applicant was thrown off. The iron sheet of the rear portion of the bus was out and hit the muscle and right upto his back. The learned tribunal has rightly noticed an important fact that the driver of the motorbike was not joined as a party to the claim application. The applicant was a pillion rider and he would not have joined the driver of the motorbike as the party to the claim application. Another reason is apparent for non joining of driver of the motorbikes is that the claimant did not want to get any compensation for this accident from him, but in case where the

appellant considers that it was the case of contributory negligence of two drivers this point should have been taken specifically and all endeavour should have been made by it to get the driver of the motorbike impleaded as a party to this claim application out of which this First Appeal has arisen. This course has not been adopted and behind the back of the motorbike driver, this point of contributory negligence is sought to be raised. In the absence of the driver of the motorbike to be a party to this claim application, the tribunal is right to hold that this exercise to determine the question of composite negligence is not called for at the stage. Though I am not expressing any final opinion but in the given facts of this case, the pillion rider, the applicant-respondent No.1 herein may be a third party and as long as the bus driver has contributed even slightly to the extent the appellant could have been made responsible for the payment of compensation as claimed by the applicant-respondent No.1. On the basis of evidence of the parties and particularly with reference to the statement of the driver of the S.T. bus, the tribunal has rightly concluded that as a result of negligence of the bus driver in driving the same, this accident has resulted. I do not find any illegality in this finding of the tribunal. The approach of the tribunal on the issue of negligence of the driver of the S.T. bus in this case is not unreasonable or it could not have been made. So far as the second ground is concerned I fail to see any merits therein.

#. From the document ex.39, certificate of the Doctor of the Civil Hospital, the tribunal has found which finding is not challenged by the learned counsel for the appellant that there were about ten injuries. The Doctors also found rupture of membruous urethra by resorting to exploratory laparotomy. The applicant-claimant-respondent has remained indoor patient in hospital and looking to the injuries sustained by him, the amount of Rs.2,500/= awarded under the head of medical expenses cannot be said to be towards higher side.

#. Rs.4,000/= have been awarded under the head of actual economic loss. The applicant-respondent No.1 could not work for a period of four months and taking into consideration his pay of Rs.1,000/= per month relying on ex.40, this amount of Rs.4,000/= awarded under the said head cannot be said to be excessive. The amount of 9,600/= awarded under the head of pain, shock and sufferings and the loss of amenities of life, etc. is also a reasonable sum to which no exception needs to be

taken. Looking to the injuries, the treatment undergone and the stay of the applicant-respondent-claimant in the hospital as indoor patient, and further treatment this amount as awarded under this head on the contrary appears to be towards lower side.

#. The net result of the aforesaid discussion is that this Appeal has no merits and the same is dismissed.

.....

(sunil)